were given discretion, the court intimates that if they had invested in seasoned securities they would not have been liable. And see *In re Tower's Estate*, 253 Pa. St. 396. The principal case goes only so far as to allow investment in preferred stock, but it would be expected that the court would go as far as the Massachusetts court. It would seem that Michigan has followed the wiser rule, to apply in the situation where the trustee is without specific authority, in this day where funds are many and gilt-edged investments are few, and where many corporations are as safe a permanent investment as are the orthodox permissible trust investments. See McKINNEY, LIABILITIES OF TRUSTEES FOR INVESTMENTS; 16 Ann. Cas. 69.

TRUSTS—TRUST FUNDS MINGLED WITH FUNDS OF TRUSTEE—PRESUMPTION IN CASE OF WITHDRAWALS AND SUBSEQUENT DEPOSITS.—A trustee wrongfully mingled trust funds with money of his own in his personal bank account. Withdrawals reduced the balance to less than the amount of the original trust fund. Subsequent deposits by the trustee from his own money left a balance greater than the amount of the trust fund. In an action to recover the money thus wrongfully mingled, *held*, that even though there was no actual intent to make restoration, the trustee's motive in making these deposits is immaterial and he must be presumed to have restored the trust fund. *Hungerford* v. *Curtis* (R. I., 1920), 110 Atl. 650.

Where the trustee has wrongfully mingled his money with trust funds, any withdrawals by him will be presumed to have been made from his own money. Thus, so long as a balance remains equal to the amount of the trust fund, the claimant can have full satisfaction. *Knatchbull* v. *Hallett*, 13 Ch. D. 696; *Board of Fire and Water Commissioners* v. *Wilkenson*, 119 Mich. 655; *Southern Cotton Oil Co.* v. *Elliotte*, 218 Fed. 567. If, after making withdrawals resulting in a balance less than the original trust moneys, the wrongdoer makes deposits from other sources, such sums cannot be attributed to the trust account. *Powell* v. *Mo. & Ark. Land Co.*, 99 Ark. 553; *Covey* v. *Cannon*, 104 Ark. 550; *Board of Commissioners* v. *Strawn*, 157 Fed. 49; *Hewitt* v. *Hayes*, 205 Mass. 356; *American Can Co.* v. *Williams*, 178 Fed. 420. Cases holding that such additions must be regarded as a restoration of the trust funds will be found to rest, it is believed, on an actual intent of the wrongdoer to make restitution, or upon circumstances from which such an intent could reasonably be inferred. *Jeffray* v. *Towar*, 63 N. J. Eq. 530; *State Savings Bank* v. *Thompson*, 128 Pac. 1120; *United National Bank* v. *Weatherby*, 70 App. Div. (N. Y.) 279; *In re Northrup*, 152 Fed. 263. At least in the face of an intent to the contrary, no court seems to have indulged in the presumption that the wrongdoer meant to make restoration. It is submitted that the holding of the court in the instant case to the effect that the actual intent is immaterial is at least misleading. The presumption that the wrongdoer meant to make reparation may not be a violent one, in view of his obvious duty to do so, but at the most it is no more than a presumption and cannot stand in the face of evidence. Such is the rule with reference to the presumption that the wrongdoer withdraws his own money first.

Covey v. *Cannon, supra.* For an exhaustive treatment of this whole subject, see article by Professor Scott on the "Right to Follow Money Wrongfully Mingled with Other Money," in 27 HARV. L. REV. 125. See also SCOTT'S CASES ON TRUSTS, pp. 547-548, note.

WORKMEN'S COMPENSATION ACT—INJURY ARISING OUT OF AND IN COURSE OF EMPLOYMENT.—An employee loading wagons of straw at a stack sought rest in the shade of a box car during his leisure period, and fell asleep and was fatally injured by the moving of the car. *Held,* the injury did not arise out of or in the course of the employment, within the meaning of the Workmen's Compensation Act. *Weis Paper Mill Co.* v. *Industrial Commission et al.* (Ill., 1920), 127 N. E. 732.

The statutes of most of the states require that in order to recover under the Workmen's Compensation Act for an injury received, the injury must arise out of and in the course of employment. The difficulty is in the application of this rule. The court in the principal case held that in order to recover under the act the accident must have resulted from a risk reasonably incidental to the employment; and a risk is incidental to the employment when it belongs to or is connected with what the employee has to do in fulfilling his contract of service. In *Brown et al.* v. *Bristol Last Block Co.* (1920), — Vt. —, 108 Atl. 927, the court said: "An injury arises in the course of employment when it arises within the period of the employment, at a place where the employee may reasonably be, and while he is reasonably fulfilling the duties of his employment; and an injury arises out of the employment when it occurs in the course of it, and as a proximate result of it, or when the injury is a natural and necessary incident or consequence of the employment, a risk being incidental to the employment when it belongs to or is connected with what a workman has to do in filling his contract." In *Haggard's Case,* — Mass. —, 125 N. E. 565, where a city's employee during the noon hour sat to eat his lunch on the railroad track, leaning against a car, and was injured when the car was kicked, it was held that the injury was not in the course of his employment by the city to entitle him to compensation under the Compensation Act; the court saying that plaintiff was not in a place in which it was necessary for him to be in the course of his work, or in going to or coming from it. The act in which he was engaged when injured had no relation to his employment. He chose to go to a dangerous place where he had no business to go, incurring a danger of his own choosing and one altogether outside any reasonable exercise of his employment. In *Buvia* v. *Oscar Daniels Co.,* 203 Mich. 73, the court said: "An injury arises out of the employment within the meaning of the Workmen's Compensation Act when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury." Where an employee voluntarily puts himself in a place of danger, where he is not required to go, the employer is in no way responsible for resulting injury. *Therriault* v. *England et al.,* 43 Mont. 376, 116 Pac. 581.